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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,530	02/12/2004	Yu-Ru Lin	4444-0136P	4145

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EXAMINER	
FLEURANTIN, JEAN B	
ART UNIT	**PAPER NUMBER**
2162	

NOTIFICATION DATE	DELIVERY MODE
05/22/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/776,530	LIN ET AL.	
	Examiner	Art Unit	
	JEAN B. FLEURANTIN	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to the application filed on 2/12/2004.

The following is the status of claims:

Claims 1-22 are presented for examination.

Drawings

The Drawings submitted on 2/12/04 are acknowledged.

Objections Specification

The Abstract is objected to because the "Title of the Invention" should not in the same page (Page 16).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent Application No. 10/845,218. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to the patent Application No. 10/845,218 claim 1 to interchangeably "media" to "video production" in order to provide summarizing videos in the most efficient manner; see patent Application No. 10/845,218.

Claim 1 of U.S. Patent Application No. 10/845,218 contain(s) every element of claim 1 of instant application serial No. 10/776,530 and thus anticipate the claim 1 of the instant application. Claim 1 of the instant application therefore are not patently distinct from the earlier patent application claim 1 and as such as are unpatentable over obvious-type double patenting. A later patent/application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim.

Instant application **10/776,530**	**10/845,218**
A method of media editing, comprising:	A method of video production editing, comprising:
receiving audio data and a plurality of associated audio descriptors, which describe characteristic of said audio data;	receiving video data and a plurality of associated video descriptors, which describe characteristic of said video data;
receiving visual data and a plurality of associated visual descriptors, which describe characteristic of said visual data;	determining a plurality of descriptive scores for said associated video descriptors, wherein at least one of said descriptive scores is corresponding to one of said associated video descriptors; and
determining a plurality of corresponding weights for said visual data; correlating said audio data and said visual data based on said corresponding weights, said associated audio descriptors, and said associated visual descriptors; and	
adjusting said audio data and said visual data to construct a media output.	adjusting said video data based on at least one of said descriptive scores to construct a video production.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus)." ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

"Claims 1, 9, 15 & 20-22 and Claims 1, 13 & 17-20 are generic to the species of invention covered by claims 1-2 of the patent. Thus, the generic invention is "anticipated" by the species of the patented invention. Cf., Titanium Metals Corp. v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (holding that earlier species disclosure in the prior art defeats any generic claim). This court's predecessor has held that, without a terminal disclaimer, the species claims preclude issuance of the

generic application. In re Van Ornum, 686 F.2d 937, 944, 214 USPQ 761, 767 (CCPA 1982); Schneller, 397 F.2d at 354. Accordingly, absent a terminal disclaimer, claims 1 and were properly rejected under the doctrine of obviousness-type double patenting." (In re Goodman (CAFC) 29 USPQ2d 2010 (12/3/1993).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106:

As per independent claim 1

The independent claim 1 is directed to a method of media editing, in which receiving audio data. Therefore, the mechanism for correlating the audio data and visual data as the purpose of the invention. The claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful and tangible result.

As per independent claim 9

The independent claim 9 is directed to the production method of media output, in which receiving audio segments. Therefore, the mechanism for correlating the audio data and visual data as the purpose of the invention. The claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful and tangible result.

As per independent claim 15

The independent claim 15 is directed to the production method of media output, in which receiving audio data. Therefore, the mechanism for correlating the audio data and visual data as the purpose of the invention. The claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful and tangible result.

As per independent claim 20

The independent claim 20 is directed to storage device, in which receiving audio data. Therefore, the mechanism for correlating the audio data and visual data as the purpose of the invention. The claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful and tangible result.

As per independent claim 21

The independent claim 21 is directed to storage device, in which receiving audio segments. Therefore, the mechanism for correlating the audio data and visual data as the purpose of the invention. The claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful and tangible result.

As per independent claim 22

The independent claim 22 is directed to storage device, in which receiving audio data. Therefore, the mechanism for correlating the audio data and visual data as the purpose of the invention. The claimed subject matter lacks a practical application of a judicial exception (law of nature, abstract idea, naturally occurring article/phenomenon) since it fails to produce a useful and tangible result.

Furthermore, the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a

process nor a composition of matter. As such, the claim fails to fall within a statutory category. It is, at best, functional descriptive material per se.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See Diehr, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in Benson were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

And, all pending claims are rejected under the same rational.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 7 & 9-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art, Figure 1, specification pages 1-2, up to line 30 ("APA") in view of U.S. Pub. No. 2004/0138873 issued to Heo et al., ("Heo").

As per claim 1, APA discloses "a method of media editing" (see Fig. 1 and item 106), comprising: receiving audio data and a plurality of associated audio descriptors, which describe characteristic of said audio data; receiving visual data and a plurality of associated visual descriptors, which describe characteristic of said visual data" (see page 2, lines 6-8);

"determining a plurality of corresponding weights for said visual data; correlating said audio data and said visual data based on said corresponding weights, said associated audio descriptors, and said associated visual descriptors" (i.e., analyzer includes video analyzer, soundtrack analyzer, and image analyzer. The analyzer measures of the rate of change and statistical properties of other descriptors, descriptors derived by combining two or more other descriptors; the video analyzer measures the probability that the segment of an input video contains a human face, probability that it is a natural scene, etc. The soundtrack analyzer measures audio intensity or loudness, frequency content, categorical, rate of change and statistical properties, in short, the analyzer receives input signal and outputs descriptors which describe features of input signal; see page 10-16 and Fig. 1).

APA fail to explicitly disclose adjusting said audio data and said visual data to construct a media output. However, Heo discloses adjusting said audio data and said visual data to construct a media output (see Heo pp [0050]). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the method of APA by adjusting said audio data and said visual data to

construct a media output as disclosed by Heo (see Heo pp [0049]). Such a modification would allow the method of APA to provide an audio mixed method and apparatus capable of mixing and reproducing different types of channel components without changing the channel formats of audio streams (see Heo pp [0010]), therefore, improving the accuracy of the system and method for the automatic and semi-automatic media editing.

As per claim 2, in addition to claim 1, APA further discloses "rendering said media output with style information" (i.e., outputting an edit decisions signal; see page 2, lines 20-21).

As per claim 3, in addition to claim 1, APA further discloses "receiving audio data and said associated audio descriptors comprises: receiving an audio signal; and analyzing and segmenting said audio signal for generating said audio data and said associated audio descriptors, wherein said audio data consists of a plurality of audio segments" (i.e., measuring segment, input video and audio intensity; see page 2, lines 10-18).

As per claim 4, in addition to claim 1, APA further discloses "receiving visual data and said associated visual descriptors comprises receiving a plurality of visual segments and said associated visual descriptors" (i.e., measuring the probability that the segment of an input video contains a human face; see page 2, lines 12-14).

As per claim 5, in addition to claim 1, APA further discloses "determining a plurality of corresponding weights comprises calculating any said corresponding weight for respective said visual segment" (i.e., measuring the probability that the segment of an input video contains a human face, and probability; see page 2, lines 12-14).

As per claim 7, in addition to claim 1, APA further discloses "receiving an audio signal; and generating a plurality of audio indices by choosing said audio signal with audio change therein" (i.e., measuring the probability and statistical properties; see page 2, lines 12-16).

As per claim 9, in addition to claim 1, APA further discloses "extracting a visual duration, from said associated visual descriptors, for each said visual segment; extracting an audio duration, from said associated audio descriptors, for each said audio segment; finding a sequence of visual segments with a correlating score that is the maximal within said plurality of correlating scores"

As per claims 10-20, the limitations of claims 10-20 are similar to claims 1-5, 7, 9 and 21-22, therefore, the limitations of 10-20 are rejected in the analysis of claims 1-5, 7, 9 and 21-22, and these claims are rejected on that basis.

As per claim 21, the limitations of claim 21 are similar to claim 9, therefore, the limitations of 21 are rejected in the analysis of claim 9, and this claim is rejected on that basis.

As per claim 22, the limitations of claim 22 are similar to claim 1, therefore, the limitations of 22 are rejected in the analysis of claim 1, and this claim is rejected on that basis.

Claim Objections / Allowable Subject Matter

Claims 6 & 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schmidt et al., U.S. Patent No. 5,999692 relates to editing.

Newman et al., U.S. Patent No. 6,154,600 relates to non-linear editing systems.

CONTACT INFORMATION

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is 571 – 272-4035. The examiner can normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571 – 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jean Bolte Fleurantin

Patent Examiner

Technology Center 2100

May 12, 2007